

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION dba Western Financial
Planning Corporation,

Defendant.

Case No.: 3:12-cv-2164-GPC-JMA

ORDER GRANTING:

**(1) RECEIVER'S FINAL FEE
APPLICATION;
[ECF No. 1811]**

**(2) ALLEN MATKINS' FINAL FEE
APPLICATION; AND
[ECF No. 1812]**

**(3) DUFFY KRUSPODIN, LLP'S
FINAL FEE APPLICATION
[ECF No. 1813]**

Before the Court are fee applications filed by the court-appointed receiver Thomas C. Hebrank (the “Receiver”), counsel to the Receiver, Allen Matkins Leck Gamble Mallory & Natsis LLP (“Allen Matkins”), and tax accountant to Receiver, Duffy, Kruspodin, LLP. ECF Nos. 1811, 1812, 1813. No oppositions have been filed. The Court finds these motions suitable for disposition without oral argument pursuant to Civil Local Rule 7.1 (d)(1) and VACATES the hearing on this matter.

1 **I. BACKGROUND**

2 **A. Receiver**

3 In the Final Fee Application, the Receiver asserts that he incurred \$30,659.85 in
 4 fees and \$100.29 in costs for the application period covering January 1, 2021 through
 5 May 31, 2021 (“Application Period”). ECF No. 1811 at 3. The breakdown of the fees
 6 amassed is as follows:

Category	Total
General Receivership	\$1,046.25
Asset Investigation & Recovery	\$0.00
Reporting	\$2,540.70
Operations & Asset Sales	\$27,029.90
Claims & Distributions	\$0.00
Legal Matters & Pending Litigation	\$0.00
Total	\$30,659.85

16 *Id.* at 4-6. Receiver now seeks payment of 100% of fees incurred, amounting to
 17 \$30,659, and 100% of the costs, amounting to \$100.23, which account for postage and
 18 copies. ECF No. 1811-3, Ex. C.

19 In addition to the fees and costs incurred by Receiver in the Application Period,
 20 Receiver also seeks final approval of the fees and costs incurred in the thirty-four interim
 21 fee applications for work performed throughout the duration of this case. ECF No. 1811
 22 at 3.¹ The total amount across all thirty-four interim fee applications amounts to
 23 \$1,997,247.88 (\$1,966,257.99 of fees and \$30,989.39 of costs), which was previously
 24 paid to the Receiver. *Id.* Finally, Receiver seeks approval of and payment of the fees
 25 held back from the thirty-four interim fee applications and payments, in the total amount
 26

27 ¹ See ECF No. 1811 at 3, n.1 for the list of ECF references for all thirty-four fee applications submitted
 28 by Receiver.

1 of \$487,976.31, along with estimated fees and costs up to \$128,273.00 for the final work
 2 to conclude the Receivership. *Id.*

3 **B. Allen Matkins (Counsel for Receiver)**

4 In the Final Fee Application, Allen Matkins asserts that it incurred \$21,297.00 in
 5 fees and \$954.46 in costs during the Application Period. ECF No. 1812 at 4. The
 6 breakdown of the fees amassed is as follows:

Category	Total
General Receivership	\$931.50
Reporting	\$1,086.75
Operations & Asset Sales	\$14,274.75
Claims & Distributions	\$4,191.75
Employment/Fees	\$362.25
Total	\$21,297.00

15 *Id.* at 7. Allen Matkins now seeks payment of 100% of the fees incurred,
 16 amounting to \$21,297.00, and 100% of the firm's \$954.64 in costs, which account for
 17 copies and messenger services. ECF No. 1812 at 8.

18 Allen Matkins also seeks final approval of the thirty-four interim fee applications
 19 submitted for work performed through the duration of this case, as well as payment of
 20 the total funds held back² over the course of those thirty-four interim applications. *Id.* at
 21 9. The total amount of fees incurred is \$1,857,531.90, of which \$385,627.70 was held
 22 back. *Id.* at 10. Finally, Allen Matkins seeks approval for the projected fees for
 23 remaining legal work from June 1, 2021 forward to the close of the Receivership. *Id.*
 24 The estimated amount is up to \$30,000. *Id.* at 10-11.

27 ² For Allen Matkins' second, third, and fourth interim fee applications, the interim payment approved
 28 by the Court was 70% of fees incurred and the holdback amount was 30% of fees incurred. ECF No.
 1812 at 9 & n.3.

1 **C. Duffy, Kuspodin, LLP (Tax Accountant for Receiver)**

2 In the Final Fee Application, Duffy, Kuspodin asserts that it incurred \$8,666.30 in
 3 fees during the Application Period. ECF No. 1813 at 2-3. During the Application
 4 Period, Duffy prepared 2019 and 2020 Income Tax Returns for Western and prepared
 5 2019 and 2020 Income Tax Returns for the WFP Receivership. *Id.* at 3.³

6 Duffy also seeks final approval of its eleven prior interim fee applications. *Id.* at 2.
 7 The total amount incurred by Duffy during the Receivership across the interim fee
 8 applications and the final fee application is \$910,926.87 in fees and \$71,693.30 in
 9 expenses. *Id.* Finally, Duffy seeks approval of the estimated fees and costs it will incur
 10 for the remaining tax work as the Receiver concludes the Receivership, which they
 11 project is up to \$19,250. *Id.*

12 **D. LEGAL STANDARD**

13 “[I]f a receiver reasonably and diligently discharges his duties, he is entitled to
 14 compensation.” *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992).
 15 “The court appointing [a] receiver has full power to fix the compensation of such
 16 receiver and the compensation of the receiver’s attorney or attorneys.” *Drilling &*
 17 *Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). A receiver’s fees must
 18 be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962 F.2d 1402, 1409 (9th Cir.
 19 1992). And the court which appoints a receiver has a duty to “protect his right to be paid
 20 for his services, to be reimbursed for his proper costs and expenses.” *Elliot*, F.2d at
 21 1576. The court, sitting in equity may draw those fees and expenses from the sale of
 22 properties related to the Receivership. *Id.* In other words, it is proper to pay the Receiver
 23 appropriate compensation, and those funds may be deducted from the total value of the
 24 Receivership.

25 As set forth in the Court’s prior fee orders, *see, e.g.*, ECF No. 1810, the Court will

27
 28 ³ For a more detailed accounting of the tasks involved in preparing these tax returns, *see* ECF No. 1813
 at 3-6.

1 assess the reasonableness of the requested fees using the factors enumerated in *Sec. &*
2 *Exch. Comm'n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)
3 and *In re Alpha Telcom, Inc.*, 2006 WL 3085616, at *2–3 (D. Or. Oct. 27, 2006). Those
4 factors include: (1) the complexity of the receiver's tasks; (2) the fair value of the
5 receiver's time, labor, and skill measured by conservative business standards; (3) the
6 quality of the work performed, including the results obtained and the benefit to the
7 receivership estate; (4) the burden the receivership estate may safely be able to bear; and
8 (5) the Commission's opposition or acquiescence. See *Fifth Avenue Coach Lines*, 364 F.
9 Supp. at 1222; *Alpha Telecom*, 2006 WL 3085616, at *2–3.

10 II. **DISCUSSION**

11 A. Complexity of Tasks

12 1. Receiver

13 The Court finds that the tasks performed by the Receiver during the Application
14 Period were moderately complex. The Receiver undertook the following tasks during
15 the relevant period:

- 16 - handling general administrative matters, including reviewing mail, email, and
17 other correspondence directed at the Receivership Entities;
- 18 - administering the bank accounts of the Receivership Entities;
- 19 - reviewing and approving expenditures;
- 20 - maintaining and updating the Receiver's website with case information,
documents, and filing inquiries;
- 21 - preparing Receiver's Thirty-Fourth Interim Report (ECF No. 1805);
- 22 - managing and overseeing the GPs' operations and real properties;
- 23 - managing and overseeing Western's operations;
- 24 - performing the accounting functions of the Receivership Entities;
- 25 - managing and overseeing tax reporting for Receivership Entities;
- 26 - managing and overseeing GP operational bills, loan payments, and cash
management;
- 27 - obtaining listing agreements and marketing properties for sale with brokers;
- 28 - analyzing, negotiating, and accepting purchase offers;
- conducting investor votes;

- closing property sales;
- sending monthly case update reports to investors listing major legal filings, property sales activity, court rulings, tax, and other information;
- listing and responding to sales activity on the various properties; and
- producing pending sales and finalizing the closing of various properties.

ECF No. 1811 at 3–4.

2. Allen Atkins

The Court finds that the tasks performed by Allen Atkins during the Application Period were moderately complex. Counsel undertook the following tasks during this period:

- preparing the Receiver’s Thirty-Fourth Interim Report (ECF No. 1799);
- sales of receivership properties including the Washoe III property, Western-Owned Dayton property, and 79-acre Minden property.
- addressing unique issues with investor distributions, preparing monthly case updates to investors, and responding to several direct inquiries from investors or their counsel regarding distributions;
- assisting with the initial work on the Receiver’s motion to make a final distribution and conclude the receivership (ECF No. 1815).
- assisting the Receiver in preparing his Thirty-Fourth Interim Fee Application and Final Fee Application (ECF Nos. 1805, 1811).

ECF No. 1812 at 7-8.

3. Duffy Kuspodin

The Court finds that the tasks performed by Duffy Kuspodin during the Application Period were moderately complex. Duffy undertook the following tasks during this period:

- preparing the 2019 and 2020 income tax returns for Western
- preparing the 2019 and 2020 income tax returns for WFP Receivership

ECF No. 1813 at 3-6.

B. Fair Value of Time, Labor, and Skill

The Receiver billed his time at \$337.50 per hour and the time of those working for him at \$297.00 per hour and \$265.50 per hour. ECF No. 1811 at 4-5. Allen Atkins billed its time at \$409.50 – \$517.50 per hour. ECF No. 1812-1. Duffy Kuspodin billed

1 its time at a rate of between \$70 and \$400 per hour, with an average hourly rate of
2 \$187.98, and a blended hourly rate of \$218.85. ECF No. 1813 at 5, 7, 8.

3 The Court continues to find, as it has in previous fee orders, that the rates charged
4 by the Receiver, Allen Matkins, and Duffy Kuspodin are comparable to rates charged in
5 this geographic area and therefore represent a fair value of the time, labor, and skill
6 provided.

7 **C. Quality of Work Performed**

8 The Court finds that the quality of work performed by the Receiver, Allen
9 Matkins, and Duffy Kuspodin to be above average. The Receiver has, and continues to,
10 competently operate the Receivership as evidenced by Receiver's Final Fee Application,
11 ECF No. 1811, while at the same time marshalling assets to support its continued
12 financial integrity. These actions benefit all investors. The Receiver and his counsel
13 have complied with the Court's orders and have made every effort to protect investors'
14 interests in the GP properties during the pendency of this litigation. The work completed
15 by Allen Matkins and Duffy Kuspodin supported the Receiver's conducting of all tasks
16 during the Application Period, and throughout the Receivership, as evidenced by the
17 work described in their final fee applications, ECF Nos. 1812, 1813.

18 **D. Receivership Estate's Ability to Bear Burden of Fees**

19 On August 30, 2016, the Court approved the Receiver's Modified Orderly Sale
20 Process, ECF No. 1359, and the use of the One Pot approach to distribute Receivership
21 assets, ECF No. 1304 at 31. These actions were taken for the dual purpose of increasing
22 the value of the Receivership Estate by selling GP properties and lowering
23 administrative costs. *Id.* at 30.

24 The Receiver indicates that the Receivership held approximately \$5.5 million in
25 cash. ECF No. 1815-1 at 10. The Court therefore finds that the Receivership Estate has
26 sufficient ability to bear the instant fee requests.

27 **E. Commission's Opposition or Acquiescence**

28 While the Commission does not expressly approve of the fee applications as

1 reasonable, the Receiver represents that counsel for the Commission has expressed its
 2 non-opposition to the fees and costs described in the fee applications. ECF No. 1811 at
 3 8. The Court will accept this representation.

4 **III. CONCLUSION**

5 Considering the above five factors taken together, the Court awards fees and costs
 6 as set forth in the following table:

7 Applicant	8 Fees Allowed	9 % of Fees Incurred	10 Costs Allowed	11 % of Costs Requested
Receiver	\$30,659.85	100%	\$100.23	100%
Allen Matkins	\$21,297.00	100%	\$954.46	100%
Duffy Kuspodin	\$8,666.30	100%	n/a	n/a

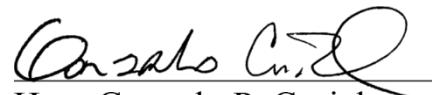
12 **IV. ORDER**

13 After a review of the parties' submissions, the record in this matter, and the
 14 applicable law, and for the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 15 1. The Receiver's Thirty-Fourth Interim Fee Application, ECF No. 1811, is
GRANTED;
- 16 2. Allen Matkins' Thirty-Fourth Interim Fee Application, ECF No. 1812, is
GRANTED;
- 17 3. Duffy Kuspodin's Final Fee Application, ECF No. 1813, is **GRANTED**;
- 18 4. The Court further **VACATES** the hearing on this matter.

22 **IT IS SO ORDERED.**

23 Dated: September 30, 2021



24
25 Hon. Gonzalo P. Curiel
26 United States District Judge
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